

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALFONSO CERVANTES REYES, No. C 10-05745 CW (PR)
Petitioner, ORDER OF DISMISSAL
v.
J. C. HOLLAND, Warden, et al.,
Respondents.

_____/

This action was opened in error when the Court received a habeas petition form from Petitioner, a "Motion to Supplement the Petition for Writ of Habeas Corpus," and a \$5.00 filing fee that were intended to be filed in a previously-filed action -- Case No. C 10-5643 CW (PR). Petitioner filed a petition in Case No. C 10-5643 CW (PR); however, he did not pay the filing fee or file a completed prisoner's in forma pauperis application in that action. He was sent a notice in Case No. C 10-5643 CW (PR) directing him to either pay the filing fee or file a completed prisoner's in forma pauperis application. The Clerk sent Petitioner a blank in forma pauperis application and told him that he must pay the fee or return the completed application within thirty days or his action would be dismissed.

Petitioner filed a duplicate copy of his habeas petition, his "Motion to Supplement the Petition for Writ of Habeas Corpus," and

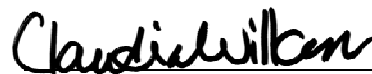
1 the filing fee; however, he did not indicate that they were to be
2 filed in Case No. C 10-5643 CW (PR). Therefore, as mentioned
3 above, a new action was opened.

4 Petitioner currently has two separate habeas actions pending,
5 although he meant to file only one action. Accordingly, the Clerk
6 is directed to remove the duplicate copy of his petition form
7 (docket no. 1), his "Motion to Supplement the Petition for Writ of
8 Habeas Corpus" (docket no. 2), and his \$5.00 filing fee from this
9 action. The Clerk is then directed to file them in his previously-
10 filed action, Case No. C 10-5643 CW (PR). The Clerk is further
11 directed to mark the duplicate copy of his petition form, his
12 "Motion to Supplement the Petition for Writ of Habeas Corpus," and
13 the \$5.00 filing fee as filed on the dates they were received by
14 the Court. The Court will review his petition and the pending
15 motion in a separate written Order in Case No. C 10-5643 CW (PR).

16 The present action is DISMISSED because it was opened in
17 error. No filing fee is due. The Clerk shall close the file.

18 IT IS SO ORDERED.

19 Dated: 1/10/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ALFONSO CERVANTES REYES,

Case Number: CV10-05745 CW

Plaintiff,

CERTIFICATE OF SERVICE

v.

JERRY BROWN et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 10, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Alfonso Cervantes Reyes 10337-111
Federal Correctional Institution - Ashland
P.O. Box 6001
Ashland, KY 41105

Dated: January 10, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California